



July 12, 2005

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“He [President Bush] said on several occasions, ‘If you have anything that you want to bring to my attention, either talk to me or talk to Harriet, Harriet Miers, who is his counsel.’”

“This certainly is a good first or second step. The president has reached out to us previously. This is the second meeting that I participated in: one alone and now with my three friends.”

-Senator Reid, stakeout at the White House, 7/12/05

“So in summary, Mr. President, the consultation we've had is great.”

-Senator Schumer, Senate Floor, 7/12/05

**Frist Floor Statement On Upcoming
Supreme Court Confirmation Process**

“Mr. President, I'd like to speak briefly about the upcoming confirmation process of a new Supreme Court justice.

“Over the last few months, the Senate has made considerable progress with judicial nominations. We've confirmed six of the president's appellate court nominees and four district court nominees.

“I'm pleased with this progress – especially when you consider that each of these appeals court nominees was blocked in the last Congress.

“To continue along this path of progress, we must place principle before partisan politics and results before rhetoric. Above all, we must fulfill our constitutional duty as United States Senators.

“Since Justice O’Connor announced her retirement 11 days ago, the Supreme Court nomination has garnered a lot of attention in Washington and across America.

“As the president considers her replacement, many senators have been talking about the issue of consultation.

“This raises some important questions. Is the president obligated to consult with senators about a nominee? And if so, to what extent?

“Under the Constitution, the president is not obligated to consult with senators before making a nomination. In fact, he’s not obligated to consult with anyone. Consultation is a courtesy – not a constitutional mandate.

“The Constitution plainly states in Article II that the president “shall nominate” and the Senate shall provide “advice and consent.” And yet, this White House has welcomed suggestions from Senators.

“On the same day Justice O’Connor announced her retirement, the president personally engaged in the consultation process. He called the two leaders of the Senate – Senator Reid and me. And he called the chairman and ranking member of the Judiciary Committee – Senator Specter and Senator Leahy.

“Since then, President Bush and the White House staff have continued to consult in an unprecedented and inclusive manner.

“For example, while in Europe at the G8 Summit with the president, White House Chief of Staff Andy Card made time to call a number of senators— including Senators Durbin, Schumer, Kennedy and Ben Nelson.

“In the last few weeks, White House Counsel Harriet Miers met one-on-one with the Democratic Leader, with Chairman Specter, with Senator Leahy, and with me. And she has called a number of other senators to discuss the Supreme Court vacancy.

“Altogether, the White House has reached out to more than 60 senators – including more than half of the Democratic caucus and every single member of the Judiciary Committee.

“And this morning, the consultation continued.

“The President invited four of us to breakfast – the two Senate leaders and the Chairman and Ranking Member of the Judiciary Committee. We had a productive meeting. We freely exchanged views on the nominations process. We discussed the type of nominee that the President may want to consider.

“I commend the President for taking these steps.

“He is not obligated to consult before selecting a Supreme Court nominee. He is choosing to consult. He is reaching out in a bipartisan, inclusive manner. In a manner that is really unprecedented. And I understand the White House will continue to consult after a nomination is made.

“Despite this unprecedented effort by the president, I am concerned that no amount of consultation will be sufficient for some of my colleagues. That’s because co-nomination, rather than consultation, may be their ultimate goal.

“Some senators may prefer to choose the nominee for the president. But that is not how the Constitution works. The president has the power to nominate, and the Senate offers advice and consent.

“Again, consultation does not mean co-nomination. Consultation is a courtesy of the president. And it works two ways. If he extends it to us, as he has, we should extend it to him.

“As we look ahead, most senators face a relatively new challenge in a Supreme Court nomination. Amazingly, more than half of us were not here 11 years ago when the Senate last confirmed a Supreme Court nominee.

“But I am confident we will rise to the occasion. We should work together to ensure that the nominations process is fair, dignified and respectful. And we should make sure that a new justice is confirmed before the Supreme Court begins its new term on October 3rd.

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Press Release from Senator John Cornyn
CONSULTATION DOES NOT EQUAL CO-NOMINATION, CORNYN SAYS
7/12/05

U.S. Sen. John Cornyn, member of the Senate Judiciary Committee and former Texas Supreme Court justice, made the following statement regarding the President’s unprecedented outreach to the Senate on the pending Supreme Court nomination, including Tuesday’s meeting with Sens. Frist, Reid, Specter and Leahy:

“The meeting at the White House on Tuesday is yet another example of the President’s unprecedented outreach to the Senate, and to both Democrats and Republicans.

“The President and his staff have already reached out to 60 Senators—60 more than the Constitution requires. My concern, though, is that for some senators and their allies in the liberal interest groups, no amount of consultation will ever be enough. But I would remind them that consultation does not equal co-nomination. The Constitution makes clear that it is the President who must choose the nominee—the Senate’s role is to advise and consent on that nominee *once he or she has been nominated.*”

Sen. Cornyn chairs the Judiciary Committee's subcommittee on Immigration, Border Security and Citizenship, and is the only former judge on the committee. He served previously as Texas Supreme Court Justice, Texas Attorney General, and Bexar County District Judge.

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Bush Earned the Right To Pick the Next Justice, Not the Democrats

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*By David Winston,
Special to Roll Call*

At the end of the film "Saving Private Ryan," Tom Hanks' character, Capt. Miller, lies mortally wounded with many of his platoon already dead, having sacrificed themselves for "a cause greater than themselves." In his last breath, Miller tells the young soldier, for whom so many have given their lives, including his own, "Earn this."

There's a lesson in that challenge that Democrats seem to have forgotten as they clamor for "joint power" in selecting the next Supreme Court justice. In all of their chest-beating calls for "moderation" and "consensus" and "cooperation," Democrats, led by Sens. Edward Kennedy (Mass.) and Charles Schumer (N.Y.), are conveniently ignoring the one stumbling block to their desire for presidential power sharing — those pesky democratic elections when a president and his party earn the right to govern through majority rule and, in so doing, to also choose the nation's judicial nominees.

In its Monday editorial, even The Washington Post acknowledged, "Liberals and Democrats, having lost the election, cannot reasonably ask Mr. Bush to nominate a justice to suit their tastes."

The Post went on to say, however, "But that doesn't mean a full-fledged war is inevitable."

The weakness in the Post's assertion is that it assumes Democrats actually accept the outcome of democratic elections if they find themselves on the losing end. In denial after the 2000 election, they carped their way to a second defeat in 2002 and repeated their mistakes in 2004 with a negative attack strategy devoid of ideas.

Since November, not much has changed. We have heard Senate Minority Leader Harry Reid (D-Nev.) call President Bush a "liar" and a "loser," but we have seen no serious plan from his party to cure the nation's energy ills. This week, Sen. Hillary Rodham Clinton (D-N.Y.) compared Bush to Mad magazine's ditz cover boy, Alfred E. Newman, but we have heard no Social Security reform plan from her or her fellow Democrats.

We've seen a parade of critics from Senate Minority Whip Dick Durbin (D-Ill.) to House Minority Leader Nancy Pelosi (D-Calif.) attack the president almost daily on nearly every conceivable issue, while failing, at the same time, to offer real solutions to the nation's challenges. Democrats don't have the constitutional right to choose Sandra Day O'Connor's replacement because they haven't earned it.

To its credit, the Bush administration has wisely begun a consultative process with both Republican and Democratic leaders about the impending nomination in an effort to help encourage a “dignified process” as the president suggested. Still, in the end, like every president before him, it is Bush’s right and responsibility to make the final selection.

When the Democrats win the White House, it will be Kennedy and Schumer’s turn at bat. What should we expect? The last time they earned that privilege in the 1992 election, President Bill Clinton did some perfunctory consultations and then appointed one of the most liberal justices in modern times — Ruth Bader Ginsburg.

Edward Whelan of the Ethics and Policy Center, notes that Ginsburg “attacked the Boy Scouts and Girl Scouts as organizations that perpetuate stereotyped sex roles” and also ... “proposed abolishing Mother’s and Father’s Day.”

She also “expressed sympathy” for the position that a constitutional right to prostitution and polygamy exists, and since joining the court, her rulings have been consistently far left of center. Only someone in a mind meld with the likes of Michael Moore could possibly see Ginsburg as a centrist choice.

If ever a case could have been made for filibustering a nominee because of his or her “extreme” views, the Ginsburg nomination was it. But instead of an ugly floor fight, Ginsburg sailed through the Senate because Republicans accepted the outcome of the 1992 election, believed in the concept of majority rule, and respected both the will of the people and right of Clinton to his choice of nominees.

Now, the tables are turned: Schumer, overheard on his cellphone last week discussing Democratic Party strategy on the nomination, said, “We are contemplating how we are going to go to war over this.”

And his troops are already mobilizing. Far-left liberal interest groups like People for the American Way and the Alliance for Justice have formed the Coalition for a Fair and Independent Judiciary with a full-scale war room.

Meanwhile, MoveOn.org, one of the left’s most extreme interest groups, has already begun hosting house parties across the country to prevent the nomination of what they term a “radical right judge.” One MoveOn host even sent “talking points” to potential guests saying, “We don’t want to come off as leftist, liberal activists. We want to come across as we are — regular folks who are finally saying enough is enough. ... We’re on the side of moderation.” Right, and Howard Dean is a country doctor.

But this is nothing new. Democrats have a long-established track record of declaring all-out war when it comes to Supreme Court nominees. The headline in a July 10 New York Times article read: “Democrats Seek Greater Voice in Nomination.” That’s all well and good, but if the Democrats want more say in choosing the Supreme Court, they should earn it the old-fashioned way — by winning an election.

David Winston is president of The Winston Group, a Republican polling firm.